MARILYN K. CRANDALL

IBLA 76-392 Decided June 14, 1976

Appeal from three decisions of the New Mexico State Office, Bureau of Land Management (BLM), rejecting appellant's noncompetitive oil and gas lease offers (NM 26138, NM 26139, and NM 26140).

Affirmed.

1. Oil and Gas Leases: Applications: Description

An oil and gas lease offer embracing a tract of land which appears on the official survey plat as a meandered lake which is unsurveyed must give a metes and bounds description of the meandered tract tied to an official corner of the public land surveys. In the absence of such a description, the offer must be rejected.

APPEARANCES: Samuel L. McClaren, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

This appeal is brought from three separate decisions of the New Mexico State Office, Bureau of Land Management (BLM), rejecting appellant's noncompetitive oil and gas lease offers (NM 26138, NM 26139, and NM 26140). Each of the decisions cites the same reasons for rejection and involves the same issues.

The land described in each of the lease offers was held to be unsurveyed land and the description was found to be inadequate because of the absence of a metes and bounds description, giving courses and distances between successive angle points on the boundary of the tract, tied by course and distance to an official corner of the public land surveys, as required by the regulations at 43 CFR 3101.1-4(b). Furthermore, the decisions noted that the land applied for in each of the offers is shown on the survey plat as

various lakes and some of the abutting land is in private ownership causing the minerals in the lake bed to belong to private parties under the doctrine of riparian or littoral rights.

In response to the first ground for the decision below, appellant contends in her statement of reasons on appeal that the land described in the applications has actually been surveyed in that the meandered lake beds constitute a closed survey into irregular lots. Appellant contends that reference to the survey field notes will give the location of the meandered lines.

Regarding the question of riparian or littoral rights, appellant recognizes that the patenting of land adjoining a meandered body of water conveys the riparian or littoral rights including ownership of minerals under the meandered tract as a general rule. However, appellant asserts that there is an exception to that rule recognized in Lee Wilson & Co. v. United States, 245 U.S. 24, 29 (1917), where, due to the absence of a permanent body of water, meanders are made through fraud or mistake. In such cases the land within the meanders remains a part of the federal public domain. Appellant contends that the so-called lakes meandered on the survey plat consisted to a significant degree of mud flats or dry lake beds at the time of the survey and that, hence, this case comes within the exception recognized in Lee wilson & Co. v. United States, supra. Appellant cites portions of the surveyor's field notes in support of her contention about the status of the lake.

Appellant further argues that even if there was some permanent body of water within the meandered area, the survey records do not disclose that the water line was actually found when the meander line was drawn. Appellant contends that in such cases the meander line serves as a boundary of the patented land. Accordingly, it is argued that the boundary of the patented tracts does not extend to the water's edge, that hence no riparian or littoral rights to the lake bed attach to the patented tracts, and that the lake bed thus remains as public domain. The case of Niles v. Cedar Point Club, 175 U.S. 300 (1899), is cited by appellant as authority for this contention.

Appellant's applications all describe certain tracts of land in Torrance County, New Mexico, which are meandered and shown as lakes on the official plat of survey. In each of the sections involved, the fractional subdivisions adjoining the meandered lake have been surveyed and assigned lot numbers. The acreage of the fractional sections has been computed and is shown on the plat. Appellant identified the tracts applied for in her lease offers by describing what would be the aliquot subdivision or subdivisions of the section in which the meandered lake is located and then excluding from the application those lots which comprise the fractional subdivision lying outside the meanders of the lake. Thus, for

example, in Sec. 35, T. 4 N., R. 9 E., N.M.P.M., where the official survey plat shows that a meandered lake intrudes into what would otherwise be the NW 1/4 NE 1/4 and the fractional subdivision outside the meanders of the lake is identified on the plat as Lot 1, the description in the lease offer (NM 26140) reads: "Sec. 35: NW/4 NE/4 except Lot 1."

The first issue raised by this appeal is the legal sufficiency of the description of the lands applied for in the oil and gas lease applications. If the lands for which application is made are unsurveyed public domain lands, then the regulations require that the offer describe the land by metes and bounds giving courses and distances between successive angle points on the boundary of the tract and connecting the tract by courses and distances to an official corner of the public land surveys. 43 CFR 3101.1-4(b). This presents the issue of whether the lakes described in appellant's oil and gas lease offers have been surveyed.

[1] Reference to the case law provides the answer:

> Where in a survey of the public domain a body of water or lake is found to exist and is meandered, the result of such meander is to exclude the area from the survey and to cause it as thus separated to become subject to the riparian rights of the respective owners abutting on the meander line in accordance with the laws of the several States. [Emphasis added; citations omitted.]

Lee Wilson & Co. v. United States, supra. Even though the validity of the meander line may be challenged for purposes of establishing riparian rights, this does not change the status of the meandered tract as unsurveyed land.

An oil and gas lease offer is properly rejected when it does not adequately describe the lands applied for. Chalfant, Magee & Hansen, Inc., 13 IBLA 252 (1973). An application for an oil and gas lease covering unsurveyed public domain lands which fails to describe the land by metes and bounds is fatally defective when the regulation requires such a description. Prentiss E. Furlow, A-29585 (July 19, 1963).

Appellant in these three lease offers has clearly failed to provide a metes and bounds description of the lands sought for leasing. The fact that the tracts involved have been meandered and that a description of the boundaries of the tracts could presumably be obtained from the field notes will not avail the appellant. The responsibility of furnishing a proper and adequate description of lands in an oil and gas lease offer is on the applicant, Duncan Miller, A-29698 (September 18, 1963), and appellant has not met this burden.

Because the issue of the legal sufficiency of the land description in the lease offers is dispositive of this appeal, we find it unnecessary to examine the question of riparian or littoral rights and ownership of the lake beds.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

I concur:

Edward W. Stuebing
Administrative Judge

ADMINISTRATIVE JUDGE THOMPSON CONCURRING:

I agree with the result in this decision and wish to add several comments. Appellant's offers all give legal subdivision descriptions. For example, a portion of the description for offer NM 26138 after giving the township and range, reads:

> Sec. 1: E 1/2 NE 1/4 and NE 1/4 SE 1/4 excepting Lots 1, 5, and 6.
> 12: S 1/2 SW 1/4 excepting Lots 1 and 2.

And so the description continues in that manner. Appellant appears to concede that generally lands under water bodies which have been meandered are not surveyed lands, but contends this is not the case here. She asserts:

> Reference to the survey notes on which each of the plats is based is necessary to determine the location of the meandered lines. Each of the areas improperly meandered is a closed survey from which the exact location and area of the land may be determined. It is submitted that the result was a survey of the land into most irregular lots. As such the subject application properly describes such lots which are sought to be leased.

If appellant means that the areas shown on the survey plats and described in the field notes as meandered lakes are actually "irregular" surveyed "lots," her theory is not only novel but completely contrary to principles of law pertaining to surveys. Furthermore, she does not explain how such an "irregular lot" could be properly described by her description, since irregular lots are described by lot numbers in the public land survey system rather than by other aliquot parts of a surveyed section.

Other contentions by appellant indicate that the meanders of the survey were improperly run and some of the lake areas were actually not lakes but were dry land. This contention, if true, does not help appellant because such land would have been land improperly omitted from the survey and would remain unsurveyed land. Cf. Utah Power and Light Company, 6 IBLA 79, 79 I.D. 397 (1972). Her description by legal subdivisions could not include such land.

Regulation 43 CFR 3101.1-4(b) requires an offer for lands which have not been surveyed under the public land rectangular system to describe them by metes and bounds, "giving courses and distances between the successive angle points on the boundary of the tract, in cardinal directions except where the boundaries of the lands are in irregular form, and connected by courses and distances to an official corner of the public land surveys."

Lands under watercourses are not included in descriptions in oil and gas lease offers of adjoining surveyed uplands. John E. Williams, 18 IBLA 354, 355 (1975); Charles H. Fingerhood, A-30461 (March 17, 1966); Emily K. Connell, 70 I.D. 159 (1963). Thus, oil and gas lease offers which have described surveyed lots along a watercourse, but have failed to include a metes and bounds description of the lands under the watercourse which were available for leasing have failed to describe all available lands for the purpose of meeting the 640-acre rule. Id. As these cases cited above indicate, even though it may be difficult for an applicant to ascertain whether such lands are lands in Federal ownership and to provide a metes and bounds description, these difficulties do not preclude the applicability of the requirement. The rationale of those cases applies here with even more force.

From appellant's other contentions it appears she is trying to have the Department now specify which lands may be Federal lands. It is appellant's obligation to submit a proper application. Indeed, in a case specifically involving an oil and gas lease offer for unsurveyed land in a bed of a nonnavigable lake where the United States was only one of several owners of the upland, the Department has held that the applicant may be required to submit an agreement with the other owners of the upland adjoining the federally-owned uplands as to the boundaries of the land applied for or to demonstrate exactly what portions of the lakebed belong to the United States. Halvor F. Holbeck, 62 I.D. 411 (1955). There is no apparent reason why that principle should not apply to appellant's offers here even in view of appellant's contentions regarding the difficulty in ascertaining ownership of various portions of the lakebeds involved. While the United States must ultimately determine whether it has authority to lease particular land, it may certainly require an offeror to furnish such information and description necessary to help in making that determination under the Secretary's discretionary authority. Id. See also, James R. Nicholson, 16 IBLA 258 (1974).

Joan B. Thompson

Administrative Judge